Navigating the Minefield:
Complying with a Patchwork of Lobbying & Ethics Laws

Presenters

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Outline

I. The Minefield
   I. Lobbying
   II. Ethics & Gifts
   III. Procurement
   IV. Hidden Mines
   V. Public Data

II. Navigation
   I. Best practices
   II. Incorporating into compliance program

The Minefield
Landscape

- Generally
- National
- State
- Local

- Changing norms: When “that is how business is done” is no longer how business can be done.

Ball of Confusion

- Different definitions of “lobbying”
- Different regulatory structures
- Different reporting thresholds
- Different registration and reporting requirements
- Different reporting deadlines
- Different exceptions
What is “lobbying”?

- Definition(s)
- Direct vs. grassroots vs. shadow

“Am I a lobbyist?”

- It’s not all crocodile shoes and pocket squares
- Corporate executives / directors
- Lawyers, in-house counsel
- Doctors and hospital executives
- Engineers and architects
- Insurance industries
- Highly-regulated industries (energy; gaming; cannabis)
The L word

- Scarlet letter
- Risk of unregistered lobbying
- Penalties
- Brand damage

Big Question: Is it a covered activity?

- Is registration required under the LDA of 1995?
- Is registration required under state and local laws?
- High threshold, loophole-ridden laws, and poor enforcement has led to many to deregister at federal level
- Wide disparity in state laws and enforcement
Enforcement

- Federal and state
- U.S. Attorney's offices
- New York: Regulator promised enforcement on new regulations
- Common igniters of enforcement

Compliance Analysis

- Regardless of jurisdiction, questions to ask:
  1. Do you interact with public officials or employees?
  2. Are you attempting to influence any government actions?
  3. Are the government actions covered by law?
  4. Are your activities excepted?
  5. What is the threshold requiring registration?
  6. If registration is required, how long do you have?
Ethics

- “Ethics by any other name would smell as sweet”
  - Billy Shakespeare
- What is “ethics”?
- For today’s purposes, includes:
  - Post-employment restrictions
  - Nepotism
  - Political activities
  - Conflicts of interest
  - Gifts

Ethics – Generally

- No “moral compasses”
- But see, NY Post Test
- Compare with codes of ethics, federal law, state law, etc.
Ethics

- Post-employment restrictions (aka “The Revolving Door”)
  - Hiring former government officials carries risk
- Nepotism
- Political activities
- Conflicts of interest
- And…

Gifts

- How is *that* a “gift”?
- *Anything* of value
- Cash / gift cards
- Tickets (sporting events; theatre; admission)
- Dinners / lunches / drinks
- Travel
- Contributions to NFPs tied to official or within district
Gifts Continued . . .

- Depends on jurisdiction:
  - Bigger ball of confusion than lobbying laws
  - Exceptions
  - “Nominal” or other dollar thresholds
  - Tickets to charitable events
  - Donations to public entities and/or governments

Procurement and Contracting

- It’s all in the details . . .
- Restrictions on lobbying and/or campaign contributions
- What No Doubt and Get Smart have to do with procurement laws
- Exceptions, exceptions, exceptions…
Hidden Mines

- Foreign Agents Registration Act (FARA)
- Foreign Corrupt Practices Act (FCPA)
- U.K. Bribery Act
- Byrd Amendment
- Nonprofits: Substantial Part Test
- Municipal lobbying and gift laws

Beware: Public information

- Lobbying disclosure databases
- State sunlight databases
- Campaign finance databases
- Freedom of information laws
- “It’s become self-aware”—the rise of AI
Navigation

Incorporating into Compliance Program

- Prioritizing = finding industry-specific examples
- Building awareness
- Incorporating best practices
- Logistics
- Reinforcing
Best Practices

- Policies and procedures
  - Gifts (both giving and receiving)
  - Entertainment
  - Lobbying
  - Political activities
  - Campaign contributions
- Training: Tailored to risk, on both laws and policies
- Auditing, monitoring, tracking of interactions and expenses

Logistics

- Who is responsible for overseeing?
  - Government affairs? GC? Compliance? Accounting?
- How is compensation, time, and/or expenses tracked?
- How are gifts monitored?
- Who is trained?
- What policies are necessary?
  - Very few orgs have lobbying policies (compare gifts, political activity, etc.)
Closing Thoughts

- Goal is awareness, not memorization
- Like any risk, biggest question is whether you are addressing, and if so, how?